



MINUTES
Committee on Public Safety
Friday, July 29, 2016 @ 2:00 p.m.
City Council Chambers, 10th Floor City Hall

CALL TO ORDER

The meeting called to order at 2:00 p.m.

ROLL CALL

Councilmember Carol Wood, Chair

Councilmember Adam Hussain, Vice Chair-arrived at 2:02 p.m.

Councilmember Kathie Dunbar, Member

OTHERS PRESENT

Sherrie Boak, Council Staff

Jim Smiertka, City Attorney

Mark Dotson, Deputy City Attorney- arrived at 2:01 p.m.

Deb Parrish

Deb Mercer

Shiela Smith

Brenda Rayle

Doug Yro

Scott Lindsey

Sam Johnson

Elvis Malcolm

Eihab Minaia

MINUTES

Councilmember Wood passed the gavel to Councilmember Dunbar.

MOTION BY COUNCILMEMBER WOOD TO APPROVE THE MINUTES FROM JULY 22, 2016 AS PRESENTED. MOTION CARRIED 2-0.

Councilmember Dunbar passed the gavel back to Councilmember Wood.

PUBLIC COMMENT

Public Comment was afforded the members present at the end of the meeting so they could hear the discussion on the ordinance. Councilmember Wood did indicate that if someone had to leave during the meeting they were welcome to speak at this time.

Discussion/Action:

DISCUSSION – Medical Marihuana Licensing Ordinance

The Committee began the review where they left off at the last meeting, page 5, line 29. Councilmember Wood reminded the group that the process is to do a full review of draft #4, and then based on comments look at incorporating what is decided on to draft #5.

Councilmember Hussain stepped away from the meeting at 2:04 p.m.

Mr. Smiertka gave a background from the meeting before, and reminded the group that the current ordinance is located in Zoning for its locations, and an ordinance where a facility needs a license not the person. Also that this ordinance is for the commercial aspects of Medical Marihuana and that he is working on another ordinance for the neighborhoods.

Councilmember Hussain returned to the meeting at 2:05 p.m.

Mr. Smiertka continued, noting that pending House Bill 4209 deals with the operator license. If that passes it will license operators. The proposed City ordinance has the same definitions as the State law, admitting that some are not legal yet, but if the State passes it through the Senate, this proposed City ordinance will be consistent with State law. Currently in Section 205 of the State law, municipalities may adopt ordinances to authorize 1 or more types of marihuana facilities, within boundaries and limitation of type. Marihuana facilities shall not be licensed unless the municipality has adopted an authorizing ordinance and continued information is in the zoning regulations. This states that when the State law is passed, the local municipality gets right of approval over the operator also. Lastly it was noted that with the mix of licensing and zoning, once this ordinance goes through this Committee, it will go to the Planning Commission for action on the zoning changes. It will then get referred back to Council.

The discussion began on page 5; line 29 – 1300.3 Establishment of Medical Marihuana Commission. Mr. Smiertka outlined the creation of the Commission and the membership via the Charter that the Mayor recommends and the Council approves. Councilmember Wood asked to add to (B) (1) “and/or Neighborhood Watch.” It was also requested that for (B) (4) add that the general public positions would have a criteria of a business background. Councilmember Hussain asked that (B) (4) be changed to state “Four (4) Members, one from each Ward, from the general population of the City.” Councilmember Hussain asked for clarification on what precludes Council from the appointments, and Mr. Smiertka confirmed it was the language in the Charter that the Mayor makes the appointments and the Council confirms.

Councilmember Dunbar pointed out that if there is one member from each Ward, there might not be a need for (B) (1) which speaks to the neighborhood organization and neighborhood council. The opinion would be that the Ward member would be active in their neighborhood organization and therefore fill both roles. Councilmember Hussain acknowledged the request, but offered the example that in the same case that same role could be filled by a patient advocate. The ordinance is intended to protect patients, residents, etc.

Councilmember Dunbar suggested that since there are many overlapping groups and some in South Lansing that do not neighborhood organizations or watches, the Ward system is a better system of geography. (B) (4) was suggested to state “one shall be...” Councilmember Wood determined the item would require further discussion at another meeting.

The group continued on page 6 which outlines the Commission and their role.

Councilmember Wood asked about line 26 which stated "shall review all applications", pointing out that if the criteria is not met, the Clerk would determine that the application is not valid, so that would not be forwarded onto Commission, therefore the Commission will not review "all" applications. Mr. Smiertka confirmed that until the Clerk determines it complies it does not go to the Commission. Councilmember Dunbar suggested changing the item to state "have been vetted". Mr. Hussain referred to line 27 which should cover that suggestion, "forwarded to it under this Chapter".

After review of the final Commission items, Councilmember Wood asked if this was the appropriate section to add an item on the timeline the Commission will have to act on applications once they are submitted. Mr. Smiertka confirmed he did not have an issue with a timeline, but with the initial submission after the Ordinance is adopted, there could be a flurry of applications so he suggested a timeline in the renewal section.

The group moved onto page 7, and Mr. Smiertka outlined 1300.4 Operation without License Prohibited. The group discussed line 11 which spoke to existing establishments that are operating and not in violation of the moratorium. They can continue to operate during the application and review periods so long as they have submitted an application 30 days from the effective date of this Chapter. There is a 30 day window to apply, then continue until notification by the Clerk. If this does not occur their application does not go to the Commission. Councilmember Wood asked about a policy since there is no list of the establishments that are currently here. Mr. Jim Smiertka confirmed there are issues now, and there are requests to increase buildings, and so they are making the determination if it started before the moratorium.

Councilmember Dunbar referenced line 18-21 and asked what criteria would cause an application not to go to the Commission. Mr. Smiertka referred them to page 11, line 34 (E) which spoke to "No application shall be submitted to the Medical Marihuana Commission unless:" Councilmember Dunbar asked if there was a timeline in the ordinance from when they submit and this gets signed off. Mr. Smiertka acknowledges that there was not at this point. Again he suggested not doing anything at the beginning because of the flurry of applications.

The group moved back to page 7, line 11-13, and Councilmember Hussain asked if there are any active investigations to the active moratorium. Mr. Smiertka noted anything in Law is complaint driven or requests from building department and he was not aware if the LPD had anything. Councilmember Wood reminded Law that when the moratorium was passed they were told to have residents file complaints with the Law office with the online complaint form, so the question was asked if law was investigating or sending any letters out. Mr. Smiertka noted Law has not stopped doing it if they get neighborhood complaints. Mr. Dotson also confirmed the process in place for investigation of neighborhood complaints on marihuana growth. There is an interoffice process established. Councilmember Hussain asked if there was a vetting process to determine who was actually operating before the moratorium, because the Commission would not want to issue if they were in violation. Mr. Smiertka referenced page 7, line 11-12 of the ordinance.

The Committee moved on through page 7. When they got to line 34, 1300.5 License Application Submission, asked if one person could apply for two licenses under two different locations. Mr. Smiertka noted the scheme of the ordinance is facility driven, so each facility would have to go through their own process, meaning an applicant could have more than one license.

Page 8 outlined what is in the application itself, and many items are similar to what we already have. Councilmember Hussain referred to line 22, the term “employee”. The question is if the employee can dispense, sell or transfer, and schedule appointments if they are not Caregiver. Mr. Smiertka noted they could only schedule the appointments. After further discussion it was determined to take out “agent or employee” from line 22, but if the language at the State clarifies it, the City might have to add this in later. The question was in this provision if it was for every single license so Mr. Smiertka recommended adding “except in the case of the provisioning center.” Under line 33 the same earlier exception would be added. Line 31 change “ordinance” to “chapter”. Line 40 removes “therefore”.

Page 9 continues the items the Commission will use to evaluate the applications. Discussion began on (13) which spoke to security, and a security guard. Councilmember Hussain asked if anywhere in the ordinance it speaks to requiring recording monitoring devices. Councilmember Wood referenced page 14, line 41 which notes a requirement that they have to have a monitoring device and stored office site for 14 days.

Councilmember Dunbar referred back to (7) – (12) on pages 8 – 9 questioning if any of those requirements are similar to any other business for their licensing. Mr. Smiertka noted the State regulates liquor licenses, and he was not aware of anything as detailed as this.

Page 9 (16) addresses the distance requirements. At the end of the ordinance it speaks to the zoning and distance to other uses. Councilmember Wood asked to add to (16), continued on page 10, “churches, parks, and community centers”, and any other uses that were in the previous ordinance. (a playground; a church or other structure in which religious services are conducted; or a facility at which substance abuse prevention services or substance abuse treatment and rehabilitation services, as those terms are defined in Part 61 of PA 368 of 1978, MCL 333.6101 et seq., are offered;)

Page 10, no comments until (21) which spoke to verification of funds. There was a brief discussion on if the Commission can vet that type of question to see what liquid assets someone would have to have to be a viable business. Councilmember Dunbar questioned the about of the funds and what other business has this requirement. Mr. Smiertka indicated other interest groups suggested \$100,000 in assets. Councilmember Wood asked for further discussion on this item in the future.

Councilmember Hussain supported the terms to protect the residents and patients and supports the language and dollar amount. It was also noted this is unique type of business.

Councilmember Dunbar went back to the due process issues, restating that when the City license anyone else they are not assessing the viability of their business, but if they comport to zoning and other ordinances. She stated her opinion that the ordinance puts a lot of variables in the mix to use, in some cases to make decisions. Councilmember Dunbar concluded her statement noting her opinion that the City needs to regulate if the applicant comports, not judge them on how much money have in the bank, and again the City does not do that with any other ordinance. Councilmember Hussain stated to the Committee and public that in this case Council is charged with this and this is unprecedented.

Page 10, (22) – (23) There was a brief discussion, and it was noted that these items when applicable, and most likely unless combination of Caregivers. Mr. Smiertka reminded the Committee that this ordinance is for the facility which is not licensed by stated yet. These items in the ordinance only come into play if the State does.

Page 11 Mr. Smiertka asked the Committee on their consideration of having testing facilities be located in the City. Mr. Dotson recommended that if the City does the licensing, the testing also should be done in the City.

The Committee reviewed line 13, (V) and determined to remove “an enclosed greenhouse” after a discussion on security, a pending urban agriculture ordinance, and types of “greenhouses”. Mr. Smiertka referenced also page 17; 1300.10 that addresses the grower facility.

The Committee moved onto (C) which speaks to the license application fee. Mr. Smiertka informed the public that the City cannot charge a fee that isn’t supported by administrative cost. Currently there is research being done by all departments involved in the process to determine their costs. Currently this is “place holder” in the ordinance and the correct amount will be added later. Councilmember Wood provided an example of if the ordinance passes, but the State has not authorized grow a facility, does the City give the \$5,000 back, and Mr. Smiertka stated the Clerk would not even accept an applicant for such.

Page 11, Line 27 addresses the Department approval process and it was determined to add to this item that “LPD performs a back ground check” therefore this vetting is done before it comes to the Commission.

Councilmember Wood asked Mr. Smiertka who Law was recommending would be the advisor, clerk or administrator of the Commission since it is not noted anywhere. Mr. Smiertka suggested the Planning & Neighborhood Development Department. Councilmember Wood asked that that be determined and placed in the Ordinance along with who will staff the Commission.

Page 12; Line 6; 1300.6 Application Evaluation

During the review of this section it was determined that on page 13 (12) should be (C), and (13) should be (D).

Councilmember Hussain asked if there could also be a cabinet level position on the Commission. This would be similar to Mr. Kaschinske on the Parks Board. Mr. Smiertka stated it is possible if that is what Council wants, it was noted that LPD would have a conflict, but the skills in the Planning and Neighborhood Development office could be directly involved.

Councilmember Dunbar asked if there was an appeal process or if the Commission was the final say. The Committee was referred to page 24, Section 1300.15. The Committee determined to remove “Denial and” and make it only “Revocation”. Mr. Smiertka added that there is a revocation and option to take away license with due process. He noted that the Council could create a review body, to handle if gross abuse by Commission, which would create a new structure. Councilmember Dunbar reminded the Committee that the City does not have any other scenario where citizens are granting a license, nothing she does understand this is uncharted process, however it needs to be considered.

The Committee went on to discuss who would decide if they are already in an establishment, if the Commission should determine if the verification of \$50,000 liquid assets is part of the Clerk’s role, especially if no one on that Commission has the skill set to make the determination. Mr. Smiertka reminded the Committee that the change earlier in the ordinance to add that the Commission should have business experience would address that.

The Committee then discussed what processes should be done before it even gets to the Commission, which the Clerk will have to verify and vet before moving them onto the Commission.

Councilmember Dunbar referred to page 7 which outlined the Application Evaluation and the criteria that the Clerk must vet before forwarding to the Commission. Then the Committee was referred to page 12 (6) which also gave the Commission items to review which in some cases duplicated what was already done by the Clerk, or were items that the Commission would have no knowledge of, such as (1) "Establishment is suitable for safe public access and has a sufficient and convenient parking spaces available in close proximity to the proposed establishment." There are already Departments in place that can review and make that determination during the vetting process before it comes to Commission. Page 12, (b) (1), (2) and (3) removed. Mr. Smiertka stated that if the Council wanted the Commission to be knowledgeable in some areas, they could give the Commission the option to hire experts to assist with their functions, and this fee would be added into the application fee. Secondly the Council could have Planning and Neighborhood Development have ex-officio role.

Councilmember Wood noted that the first ordinance in 2011 did not have a Commission, so why now. Mr. Smiertka stated that this was driven by the request for evaluation by the patient advocacy groups, and if it becomes part of the State law, it takes it to an open evaluation process with citizen and neighborhood involvement. This Commission can be structured any way Council wants.

Councilmember Wood asked Mr. Smiertka if some Commission review items have already been part of the application and been approved to get to Commission, does it make sense to include again. Mr. Smiertka stated they can look at Section 1300.5, which is the application and then look at the Commission list. Items such as zoning will be reviewed by the department, and if they do not meet the zoning they will not go to the Commission.

Mr. Dotson added that another alternative to not having a Commission is to have a single person the decision. In this case to have a Commission comes from a notion to have a broad scope be involved in the decision. Mr. Smiertka stated he can remove all requirements under 1300.5 and encapsulate into a business plan. Councilmember Dunbar noted that the Committee understands 1300.5 and 1300.6, which are best analyzed by the appropriate department. This would include proof of ownership, security plan, floorplan, zoning, signage, location of parking, distance calculations, bank statements, to name a few. Councilmember Wood asked Mr. Smiertka to review and consider the 11 items in 1300.6 for modifications.

Page 13; Section 1300.7

The fee noted right now is currently a place holder and under review. Councilmember Hussain asked if the renewal would have Commission input, suggesting that would be an appropriate place to exercise the impact on neighborhoods.

Councilmember Hussain stepped away from the meeting at 3:38 p.m.

It might not be relevant for the entire Commission review, but when renewals come due there should be an impact statement sent to surrounding areas. See page 13 (9)

Page 14 – 1300.8

Councilmember Hussain returned to the meeting at 3:49 p.m.

Currently under 1300.8 (B) the license holder can transfer to a different location by approval from the Clerk. Councilmember Wood suggested that this should include an impact statement from the neighborhoods also. Councilmember Dunbar noted then that with a transfer if location proposed is vetted and not within the perimeters, and does not have a violation they only review the neighborhood impact. It was noted that the City is licensing the establishment not the property. Councilmember Dunbar asked when they review will the Commission get a whole list of the caregivers or just get the principal. Mr. Smiertka stated that “stakeholder” is defined, and referred to page 5.

Councilmember Wood requested that Commission approval be added to section 1300.8.

Page 15, line 7 – Mr. Smiertka noted that a transfer from a different individual, as currently written, only requires LPD, Clerk and Treasurer approval. It does not require Commission, but he will add that.

Page 15 – 1300.9

Mr. Smiertka noted that Provisioning Centers are the only establishment licensed by State.

Councilmember Wood informed the group the next meeting on the draft ordinance will be August 12, 2016 at 2 p.m. The discussion will begin on page 16 of the ordinance. The Public Safety Committee would be meeting on August 5th at 3:30pm and the Chief of Police would be presenting his annual report/

PUBLIC COMMENT

Ms. Parrish spoke in support of the legal dispensaries and the ordinance.

Ms. Mercer spoke on a concern with no limit on the number of businesses or cap of licenses, and asked why Law is not able to search tax roles for a list of businesses that have opened since the moratorium. Ms. Mercer then asked who would be in charge after the license is granted and who will oversee the facilities. Lastly, she questioned how many Provisionary Centers can a patient go to in one day, and is there a data base to monitor it.

Councilmember Wood answered one question that when Council put the Moratorium in effect, it was recommended by Law that they not obtain a list of current open dispensaries because that would look as if the City was giving them legal rights to be in business, when technically they should not be open. As for the question on researching the tax rolls if a business is renting they would not be on the tax rolls. In regards to monitoring the patient, at this point there is nothing, they are following the same State legislature. They are looking at unique data base, but there is nothing the City can do as far as enforcement as to how many times a patient goes to Center. The City enforcement will work with licensing, LPD, LFD, Code Compliance to make sure the businesses cooperate. The compliance practice will be something set up by working with the City Attorney office, but currently Council is still working out a policy.

Ms. Smith spoke on behalf of a Substance Abuse Treatment Agency asking the Committee to include in the ordinance that the facilities have to be 1,000 feet. Councilmember Wood noted that should be reflected in the next draft.

Ms. Rayle also representing a Substance Abuse Treatment Agency spoke in support of a setback of 1,000 ft.

Mr. Johnson went thru the ordinance addressing questions and opinions he had specific to testing of the product, recommending the term “medical marijuana establishment” not

provisioning centers or testing centers. He spoke in opposition to the application fee and license fee and asked for supporting documentation. Councilmember Wood clarified that all fees and licensing charges have to meet criteria, and Council is working through that process. Currently the numbers noted are place holders in the ordinance to denote there will be fees.

Mr. Johnson went on to speak in opposition to the Commission reviewing the application. Councilmember Dunbar clarified her earlier comments, stating her intent earlier was not to get rid of the Commission because there is validity to having their input. The Commission is not paid, so take things off the Commission and give to the Department could increase the fees. Nothing can be charged over the actual costs of the process, and this could increase that.

Mr. Malcom spoke in opposition to the process stating his opinion that no other establishment or industry does this. He also spoke in opposition to the hours of business closing at 10:00 p.m., and asked how many times they will inspect. Mr. Malcom encouraged the Committee to consider hiring an inspector just for enforcement of this ordinance.

Councilmember Wood again reminded the group the time the Committee will discuss the ordinance will be August 12th at 2 p.m. The Committee will meet on August 5th for the LPD Annual Report.

Any questions on the ordinance should be forwarded to Council Office Manager.

ADJOURN

The meeting was adjourned at 4:37 p.m.

Submitted by, Sherrie Boak,

Recording Secretary Lansing City Council

Approved: August 5, 2016